



August 28, 2008

RECEIVED
CITY OF TUKWILA
AUG 28 2008
PERMIT CENTER

VIA HAND DELIVERY

Carol Lumb
City of Tukwila
6300 Southcenter Boulevard, Suite 100
Tukwila, WA 98188

Re: Comments on City of Tukwila Shoreline Master Program Update

Dear Ms. Lumb:

We represent the James Campbell Co. LLC and The Realty Associates Fund VII, L.P., a Delaware limited partnership, both of which own property in the City of Tukwila.¹ We also represent International Airport Centers LLC, which owns property in the City's annexation area (parcel number 0001600060). On behalf of those entities, we submit the following comments on the City's draft Shoreline Master Program update ("SMP").

Like many other properties on the City's shorelines, our clients' properties are developed with existing light industrial buildings leased to multiple tenants. Because these properties may someday be redeveloped, our clients are very concerned with the SMP's restrictions on new development. Equally important, the SMP contains numerous provisions that stand to interfere with the rational and efficient management and use of existing buildings of this sort. For these reasons, which are further discussed below, our clients request that the SMP be substantially revised based on additional public input, rather than adopted in its current form.

I. Defects in public process.

We believe the opportunity for public input into the City's SMP update has been inadequate. Many property owners, including our clients, have learned of the update only in the last several weeks. As a result, on key issues of concern to property owners, the SMP does not reflect dialogue with the property owners that could resolve issues in a manner that serves both the City's and the property owners' goals. This is particularly true with respect to issues (addressed below) regarding existing developments. We urge the City to slow down, seek public input, and engage in dialogue with affected parties. Formation of a stakeholder's group of property owners to advise the City would be an excellent first step. Such an approach would result in a better product and avoid disputes in the future.

¹ The James Campbell Co. LLC owns various parcels including parcel numbers 7888900152, 7888900162, 7888900120 and 7888900160. The Realty Associates Fund VII, L.P., a Delaware limited partnership, owns parcel number 0223300010.

Y:\WP\JAMES CAMPBELL CO\CAMPBELLCOMMENT\TR.DOC

II. Restrictions on redevelopment.

As a long-term owners of property, our clients are concerned that the SMP excessively restricts redevelopment of their properties. As the SMP's impact on redevelopment is of concern to many other parties, we expect that issue to be extensively addressed at the hearing. We simply point out that we have serious doubt as to whether the approach taken by the City is consistent with the guidelines at WAC ch. 173-26. Given the highly developed nature of the City's shorelines, we question the factual support for the City's approach as well as the legal validity of that approach given its draconian impact on property owners.

III. Impact on existing development.

As noted above, our clients' properties are developed with existing light industrial buildings leased to multiple tenants. Our clients are particularly concerned that the SMP will interfere with the rational and efficient management and use of existing buildings of this sort.

The SMP purports to apply various (and highly restrictive) shoreline development standards upon any exterior alteration of a structure where the cost within a three year period equals or exceeds 10% of the building's assessed value, as well as upon any change in building occupancy and any site modification. *See* SMP at p. 60. Taken at face value, these provisions could trigger applicability of the SMP's new restrictions in cases of re-leasing of existing buildings and alterations for existing and new tenants.

This would be highly damaging to our clients and the many other existing light industrial developments in the City. The SMP's development standards include extremely wide buffers, a requirement that loading docks and service areas shall generally be located on the landward side of the development, low height limits, stringent storm drainage requirements, and numerous other site design standards. Taken together, these standards are utterly inconsistent with the configuration of our clients' existing developments (and with much of the existing shoreline development in the City). To require existing developments to be brought into compliance with these regulations would effectively require the complete rebuilding of the existing development (with huge loss of value).

It may be that the City did not intend such an approach. We note that the SMP incorporates the provisions of TMC ch. 18.70 as to nonconforming lots, structures and uses. However, the interrelationship of the foregoing provisions of the SMP, on one hand, and TMC ch. 18.70, on the other, is potentially highly ambiguous. The language in the SMP could be read to create additional situations, beyond those contained in TMC ch. 18.70, where existing developments would need to comply with the new SMP requirements.

Given the huge amount of existing light industrial development on the City's shorelines, it is unacceptable to have any ambiguity as to how existing developments are treated. We note that every time an existing building is re-leased, re-financed, or sold, a due diligence inquiry must occur in which the potential lessee/bank/buyer must satisfy itself about how the City's regulations will impact operation of the property.

We urge the City to alter its approach so that the SMP contains a stand alone section that clearly addresses the application of the SMP to existing development and exactly how

nonconformance issues will be handled. (This is the approach taken by various other jurisdictions including the City of Seattle.) This section should be drafted based on input from existing property owners who have practical experience in the issues that arise in the operation of commercial properties.

With respect to the substantive question of the SMP's application to existing development, we urge the City to take into account the realities of operating commercial property. We offer the following nonexclusive list of principles that should govern:

Property owners should be able to re-lease existing space to new tenants without triggering requirements to alter the site to bring it into compliance with current SMP requirements. In recognition of market realities, property owners should be able to leave space vacant for a reasonable length of time without triggering new requirements.

Property owners should be able to make reasonable alterations to their structures and/or sites to accommodate the needs of existing and new tenants without triggering new requirements. While it may be reasonable for a significant expansion in a building footprint to trigger new requirements, there are many, less significant alterations that should clearly be allowed.

Property owners should be able to rebuild their existing structures in the event of casualty, even if the structure is destroyed to an extent of more than 50% of its replacement cost. We note that the City of Seattle allows a nonconforming shoreline structure that is destroyed to be rebuilt to the same or smaller configuration existing immediately prior to the time the structure was destroyed, regardless of the extent of destruction. *See* Seattle Municipal Code 23.60.124.

Even if the City's current approach (e.g., a 50% replacement cost threshold) is appropriate in a standard zoning situation outside the shoreline area (where development standards are much less restrictive), such an approach is too onerous in light of the highly restrictive regulations contained in the new SMP. Indeed, the City's approach will cause substantial hardship in the operation of existing properties: a potential lessee, bank, or buyer doing its due diligence will find unacceptable the idea that a substantial casualty will trigger wide buffer requirements or site layout constraints that will preclude the building from being rebuilt in anything approaching its existing configuration.

In sum, we urge the City not to adopt the SMP in its current form, but rather to seek additional public input and make appropriate revisions. Particularly on the issue of impacts on existing developments, we believe there are numerous changes that can and should be made that would serve the interests of both the City and the property owners. Our clients are happy to work with City to come up with appropriate language, either as part of a stakeholder's group or otherwise.

Thank you for your consideration of these comments.

Very truly yours,

GORDONDERR LLP

A handwritten signature in black ink, appearing to read "Jeff Weber", written in a cursive style.

Jeff S. Weber

cc: John Wanamaker